



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,669	01/29/2004	Heinrich Lang	LMX-129 CON	5424
7590	03/23/2005		EXAMINER SHAHER, RICKY D	
McNair Law Firm, P.A. P.O. Box 10827 Greenville, SC 29603-0827			ART UNIT 2872	PAPER NUMBER

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/767,669

Applicant(s)

LANG ET AL.

Examiner

Ricky D. Shafer

Art Unit

2872

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Continuation of 11. does NOT place the application in condition for allowance because: of the presence of claims 13-15 and 17-23 which have been withdrawn as being directed to a non-elected invention.

Applicants' traversal of holding claims 13-15 and 17-23 as being directed to a non-elected invention in the reply filed on 03/03/2005 is acknowledged. The traversal is on the ground(s) that the examiner has not shown separate utility and that there would be no burden to examine all the claims in the present application. This is not found persuasive because item 1, as set forth in the Office action mailed on 02/04/2005, clearly demonstrates that claims 13-15 and 17-21 are independent and distinct from the invention originally claimed, as noted by their "mutually exclusive details," and the presence of such "mutually exclusive details" provides a prima facie showing that the subcombinations each have separate utility (e.g., such as a rearview mirror assembly with their own/separate details, a vehicle lighting apparatus...etc.).

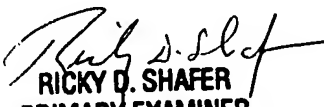
In addition, in view of the newly added limitations present in the newly submitted claims, the newly submitted claims would further required a search in at least class 403, subclass 376, which would not be required for the original presented claims. This clearly demonstrates and establishes an example of burden.

Moreover, continued search and examination of claims to a nonelected invention, including claims having substantially different structural limitations, is a prima facie showing of burden. Applicant may overcome the requirement for restriction by presenting an allowable linking claim (see M.P.E.P. 809.04) or by providing a clear admission on the record that the claim(s) drawn to a given non-elected invention is not patentably distinct from the elected invention. See M.P.E.P. 803.

The requirement is still deemed proper and is therefore made FINAL.

Note: This application contains claims 13-15 and 17-23 drawn to an invention nonelected with traverse. A complete reply to this office must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Continuation of 13. Other: The terminal disclaimer filed on 3/03/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,830,352 has been reviewed and is accepted. The terminal disclaimer has been recorded.


RICKY D. SHAFER
PRIMARY EXAMINER
GROUP 2500
ART UNIT 2872